

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IRENE CABUANG,

No C 04 2034 VRW

Plaintiff,

ORDER

v

JO ANNE BARNHART, COMMISSIONER OF  
SOCIAL SECURITY,

Defendant.

Plaintiff appeals from the decision of the Social Security Administration ("SSA") denying plaintiff social security disability benefits. The court now considers cross motions for summary judgment. Doc #10; Doc #13. For the reasons stated below, the court DENIES plaintiff's motion and GRANTS defendant's motion.

I

A

To qualify for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act (the Act), plaintiff must have been disabled within the meaning of the Act on or before June 30, 1996, the date she was last insured for the purpose of DIB. Doc #8, Administrative Record (AR) 16-17.

1 Plaintiff was thirty-two years old on January 1, 1996,  
2 the disability onset date she alleges. AR 79, 102. Plaintiff has  
3 graduated from high school and thereafter became a licensed dental  
4 assistant. AR 92. Plaintiff last worked outside the home in 1991,  
5 at which point she devoted all of her time to raising her children  
6 and homemaking. AR 81, 92.

7 On September 4, 1996, plaintiff underwent a diagnostic  
8 laparoscopy to explore suspected endometriosis. AR 144-45. Dr  
9 Norman Takaki noted in his preoperative report that plaintiff  
10 described "long duration right quadrant pain." AR 144. While  
11 evidence of early stage endometriosis was observed, it was  
12 apparently "fulgurated without difficulty," (i e removed) leading  
13 to a positive resolution. Id.

14 In her application for DIB, plaintiff claimed that she  
15 became "too disabled to work" on September 4, 1996, after  
16 "complications" during her laparoscopy led to a tremendous increase  
17 in pain. AR 81, 87. In two other blanks on the same application,  
18 plaintiff wrote September 4, 1996 as her date of disability onset,  
19 although these entries were crossed out and replaced with January  
20 1, 1996. AR 87. Plaintiff further reported in her application  
21 that following her laparoscopy, she could no longer interact with  
22 her children or lift fifty pounds, as she could before the surgery.  
23 AR 91, 93. Prior to her laparoscopy, plaintiff had reported  
24 occasional instances of pain in her back, abdomen and hands. AR  
25 279A, 281, 286. Plaintiff also stated she had suffered from  
26 dysphagia, migraines, low back pain and muscle spasms since January  
27 1, 1996. AR 87. At two separate hearings in connection with  
28 plaintiff's application for DIB, she stated that she had suffered

1 from pain in her right hip and leg and low back since 1992. AR 37,  
2 43-44, 471-72.

3           Since her laparoscopy, plaintiff has seen more than  
4 twenty medical doctors regarding her pain symptoms. AR 112, 120,  
5 121, 132, 144, 150, 162, 167, 168, 177, 191, 192, 196, 213, 224,  
6 244, 245, 259, 289, 271, 276, 442, 456. To relieve her pain,  
7 plaintiff had received chiropractic and podiatric treatment,  
8 psychological counseling, acupuncture and physical therapy. AR  
9 152, 157, 216, 259, 295. The administrative record contains  
10 considerable evidence that plaintiff consistently reported to her  
11 care providers that her pain resulted from medical error during her  
12 laparoscopy. AR 132, 149, 150, 155, 171, 173, 188, 190, 195, 213,  
13 222, 243, 249, 259, 295. Similarly, the record contains several  
14 reports documenting plaintiff's statements to physicians that she  
15 suffered no serious medical ailments prior to her laparoscopy. For  
16 example, in December 1996 Dr Marilyn Devries reported that  
17 plaintiff "gives a long history of problems since she had a pelvic  
18 laparoscopy about two months ago," and that her "medical history  
19 \* \* \* was negative" prior to the laparoscopy. AR 132. In December  
20 1996 Dr Anne O'Duffy reported: "She states that she never had  
21 headaches before this [laparoscopy]." AR 173. In a September 1997  
22 letter Dr James Davis wrote to Dr Richard Cohen: "As you know, she  
23 was in generally excellent health until September of 1996 when she  
24 had laparoscopic surgery." AR 249. In September 1999, Dr Peter  
25 Alevizos, a clinical psychologist, reported that "[b]efore the  
26 operation, she was an active and vibrant mother, looking forward to  
27 having a third child." AR 295.

28 \\



1 disabled since January 1, 1996 due to muscle spasms and pain in her  
2 back, joints, right hip, and neck. AR 21, 36. Plaintiff testified  
3 that some of her pain had been present since 1992, while other pain  
4 had presented only after her laparoscopy in September 1996. AR 37-  
5 39, 43. Plaintiff's husband, Arnold Cabuang, also testified,  
6 stating that plaintiff's pain began in 1992, "decline[d]" through  
7 1996, and then "dramatically" worsened after plaintiff's  
8 laparoscopy. AR 48. On October 29, 1999, the ALJ denied benefits  
9 finding that plaintiff's "disability began after June 30, 1996."  
10 AR 20.

11 In general, to determine whether a claimant is entitled  
12 to DIB, an ALJ employs a five-step sequential evaluation of  
13 plaintiff's disability. 20 CFR § 404.1520(a)(1). Once the ALJ  
14 determines that a claimant is or is not disabled, the inquiry stops  
15 at that step. 20 CFR § 404.1520(a)(4). At the first step, the ALJ  
16 considers whether the claimant is currently "doing substantial  
17 gainful activity." If not, then the ALJ inquires at the second  
18 step whether the claimant has a "severe medically determinable  
19 physical or mental impairment \* \* \* or a combination of impairments  
20 that is severe." If so, then at the third step, the ALJ determines  
21 whether the claimant has a condition which meets or equals the  
22 conditions outlined in the Listing of Impairments in Appendix 1,  
23 Subpart P. If the claimant does not have such a condition, at step  
24 four the ALJ asks whether the claimant can perform her past  
25 relevant work. At the fifth step, the ALJ considers whether the  
26 claimant can make an adjustment to perform other work which exists  
27 in substantial numbers in the national economy. 20 CFR  
28 § 404.1520(a)(4)(i)-(v); § 404.1560(c).

1 Applying this five-step sequential evaluation, the ALJ in  
2 this case denied plaintiff benefits at the second step, and  
3 accordingly did not consider steps three through five. AR 16-20.  
4 The ALJ found that if plaintiff was not disabled before June 30,  
5 1996, she could not be found eligible for DIB. AR 16. The ALJ  
6 further found that "[p]rior to June 30, 1996, the evidence fail[ed]  
7 to establish that [plaintiff] suffered from any severe impairments,  
8 let alone that she was disabled." AR 18. Because "the objective  
9 medical evidence clearly indicate[d] that [plaintiff] never had any  
10 problems prior to September 4, 1996," the ALJ deemed it unnecessary  
11 to determine whether plaintiff's "alleged impairments" were severe.  
12 Id. Plaintiff unsuccessfully requested Appeals Council review of  
13 the ALJ's denial of benefits. AR 5-6.

14 On March 26, 2001, plaintiff appealed the SSA's decision  
15 to this court in an action entitled Cabuang v Halter, Civ No  
16 01-1228-MMC. On September 6, 2001, pursuant to stipulation between  
17 the parties, the court remanded the matter to the SSA for the  
18 purpose of granting plaintiff a new hearing, at which the ALJ was  
19 to evaluate the testimony of plaintiff's husband. AR 340-41.

20 On September 5, 2002, the ALJ held a second hearing.  
21 Plaintiff's testimony was similar to her testimony at the September  
22 2, 1999 hearing, although she emphasized her pain symptoms prior to  
23 June 30, 1996. AR 471-79. The following exchange between  
24 plaintiff and her attorney, discussing plaintiff's postnatal state  
25 in 1992, is representative:

26 Q: Okay. And how about afterwords going through the end  
27 of the pregnancy. Was there any problem then?

28 A: Yes.

1 Q: What sort of problems?

2 A: Started not being able to step on my right leg, right  
3 foot at times. And I would have sharp pain.

4 Q: Where would the pain be?

5 A: Right hip area.

6 AR 471. Plaintiff's husband also testified again, offering his  
7 recollection of how plaintiff's pain symptoms had progressed. AR  
8 481-84.

9 On October 4, 2002, the ALJ issued a decision denying  
10 plaintiff benefits. AR 325. After observing that plaintiff must  
11 have established disability prior to June 30, 1996 in order to  
12 claim DIB, the ALJ applied the five-step sequential evaluation and  
13 again denied plaintiff benefits at the second step. AR 319-325.  
14 Noting that mere recitation of symptoms is insufficient to  
15 establish a disability, 20 CFR § 404.1528(a), the ALJ determined  
16 that nothing in the record established that plaintiff was disabled  
17 within the meaning of the Act prior to June 30, 1996. AR 321, 322.  
18 The ALJ found plaintiff's hearing testimony to be unhelpful, as  
19 "she focused more on her current situation than on her condition  
20 prior to" her laparoscopy in September 1996, and her recitation of  
21 pre-surgery pain symptoms "fail[ed] to reveal any details of its  
22 functional impact." AR 323. Testimony by plaintiff's husband also  
23 failed to "shed any light on this issue." In fact, the ALJ  
24 commented that "the testimony of [plaintiff] and her husband \* \* \*  
25 both set the date for the worsening of [plaintiff's] condition  
26 \* \* \* squarely at September 4, 1996." Id. Regardless of the  
27 weight accorded the testimony of plaintiff and her husband, the ALJ  
28 determined that "substantial other evidence of record \* \* \* shows

1 that the more than minimal limitations in [plaintiff's] ability to  
2 perform work-related functions did not arise until after her  
3 September 4, 1996 procedure." Id.

4 Plaintiff's request for Appeals Council review was  
5 denied, making the ALJ's decision final. AR 299-301. On May 25,  
6 2004, plaintiff filed this action seeking judicial review.

## 8 II

9 The court's jurisdiction is limited to determining  
10 whether the SSA's denial of benefits is supported by substantial  
11 evidence in the administrative record. 42 USC § 405(g). A  
12 district court may overturn a decision to deny benefits only if the  
13 decision is not supported by substantial evidence or is based on  
14 legal error. See Andrews v Shalala, 53 F3d 1035, 1039 (9th Cir  
15 1995); Magallanes v Bowen, 881 F2d 747, 750 (9th Cir 1989). The  
16 Ninth Circuit defines "substantial evidence" as "more than a mere  
17 scintilla but less than a preponderance; it is such relevant  
18 evidence as a reasonable mind might accept as adequate to support a  
19 conclusion." Andrews, 53 F3d at 1039. Determinations of  
20 credibility, resolution of conflicts in medical testimony and all  
21 other ambiguities are to be resolved by the ALJ. See id;  
22 Magallanes, 881 F2d at 750.

## 24 III

### 25 A

26 The Act provides that certain individuals who are  
27 disabled shall receive disability benefits. 42 USC § 423(a).  
28 Disability is the "inability to engage in any substantial gainful



1 activity by reason of any medically determinable physical or mental  
2 impairment which can be expected to result in death or which has  
3 lasted or can be expected to last for a continuous period of not  
4 less than 12 months." 42 USC § 423(d)(1)(A). An individual will  
5 be found disabled if his impairments are such "that he is not only  
6 unable to do his previous work but cannot, considering his age,  
7 education, and work experience, engage in any other kind of  
8 substantial gainful work which exists in the national economy  
9 \* \* \*." 42 USC § 423(d)(2)(A) Plaintiff bears the burden of  
10 proving that she was "either permanently disabled or subject to a  
11 condition which became so severe as to disable her prior to the  
12 date upon which her disability insured status expire[d]." Johnson  
13 v. Shalala, 60 F3d 1428, 1432 (9th Cir 1995). Mere recitation of  
14 pain symptoms is insufficient to establish disability under the  
15 Act. 20 CFR § 404.1528(a).

## B

18 Plaintiff contends that she is disabled under the Act and  
19 that the ALJ's decision denying her DIB is flawed for three  
20 reasons. First, plaintiff contends that the ALJ erred by focusing  
21 almost exclusively on evidence predating plaintiff's date last  
22 insured, to the exclusion of medical evidence after that date.  
23 Second, plaintiff argues that the ALJ erred in failing to consult  
24 with a medical expert to determine plaintiff's onset date.  
25 Finally, plaintiff argues the ALJ ignored evidence of plaintiff's  
26 mental impairment and subjective pain prior to her date last  
27 insured, and that the ALJ ignored the testimony of plaintiff and  
28 her husband.

Plaintiff first alleges that the ALJ erred by focusing almost exclusively on evidence of disability prior to plaintiff's date last insured – June 30, 1996. In this regard, plaintiff points to the ALJ's finding that there was "nothing in the record to establish that the claimant had any 'impairment' as defined [by the Act] at any time prior" to plaintiff's date last insured. AR 322; Doc #10, 6:5-10.

It would indeed be error for the ALJ not to consider evidence relating to plaintiff's date of disability onset merely because that evidence dated from after plaintiff's date last insured. Lester v Chater, 81 F3d 821, 832 (9th Cir 1995); see also Smith v Bowen, 849 F2d 1222, 1225 (9th Cir 1988). After all "[i]t is obvious that medical reports are inevitably rendered retrospectively \* \* \*." Smith, 849 F2d at 1225. This court also recognizes, however, that any "deterioration in [plaintiff's] condition subsequent to [the date last insured] is, of course, irrelevant." Waters v Gardner, 452 F2d 855, 858 (9th Cir 1971). What is relevant is whether plaintiff was disabled within the meaning of the Act prior to the expiration of her insured status. See Morgan v Sullivan, 945 F2d 1079, 1080 (9th Cir 1991).

Plaintiff's contention that the ALJ ignored evidence generated after the expiration of her insured status does not withstand scrutiny. To the contrary, the ALJ made extensive findings as to plaintiff's evidence of disability generated both before and after her date last insured. The ALJ's decision notes that plaintiff made only limited reports of pain symptoms to her doctors prior to the expiration of her insured status. AR 322.

1 For example, prior to September 4, 1996, the ALJ found only "a few  
2 complaints of low back pain" and a single complaint each of "hand  
3 cramps" and "abdominal pain." Id. The ALJ further observed that  
4 in regard to plaintiff's complaints of pain in her neck, shoulders,  
5 upper back, temporomandibular joint, right leg and foot; headaches;  
6 joint swelling and pain; and muscle stiffness and spasms "the  
7 objective medical evidence clearly indicates that the claimant  
8 never had these latter problems until after June 30, 1996 \* \* \*."  
9 Id. The ALJ went on to say that no impairment could be "inferred  
10 from the recitation of symptoms after September 4, 1996, both  
11 because symptoms alone are insufficient to establish an impairment  
12 and because there is little connection between the claimant's pre-  
13 and post-September 4, 1996 symptoms." Id at 322-23.

14 Plaintiff carries the burden of proving the onset of a  
15 qualifying disability prior to June 30, 1996, her date last  
16 insured. See Johnson, 60 F3d at 1432. As in Johnson, the "medical  
17 reports during the relevant time period make only limited  
18 references to medically observed limitations on functional  
19 capacity; therefore they fall short of the substantial medical  
20 evidence required to establish a disability" within the meaning of  
21 the act. Id at 1433.

22 The ALJ duly considered all the evidence in the record,  
23 including evidence post-dating plaintiff's date last insured, and  
24 concluded that nothing established the existence of a disability  
25 prior to that date. The ALJ's conclusion is supported by  
26 substantial evidence and is premised on the proper legal standard.  
27 Plaintiff's first argument accordingly fails.  
28

Plaintiff next contends that the ALJ erred in not consulting a medical advisor. ALJs are required to adhere to rules set forth in Social Security Rulings (SSRs). Holohan v Massanari, 246 F3d 1195, 1202, fn 1 (9th Cir 2001). SSR 83-20 requires an ALJ to consult with a medical advisor in any case where, because of ambiguity in the evidence, an onset date must be inferred. DeLorme v Sullivan, 924 F2d 841, 848 (9th Cir 1991). In Armstrong v Comm'r of Soc Sec Admin, 160 F3d 587 (9th Cir 1998), the Ninth Circuit ruled that an ALJ's determination that a claimant had become disabled at some time after March 31, 1992, his date last insured, but before August 9, 1994 was erroneous because he failed to set a specific date of disability onset. Id at 589. The court held: "where a record is ambiguous as to the onset date of disability, the ALJ must call a medical expert to assist in determining the onset date." Id at 590.

To qualify for DIB, plaintiff must demonstrate that she not only has a disabling impairment, but also that her impairment is "severe." 20 CFR § 404.1520(a)(4)(ii). Plaintiff's impairment is "severe" if it "significantly limits [her] physical or mental ability to do basic work activities." 20 CFR § 404.1520(c).

Unlike the ALJ in Armstrong, the ALJ here did not find that plaintiff had a disability within the meaning of the Act at any time, either before or after June 30, 1996. The ALJ stated: "Since the objective medical evidence clearly indicates that the claimant never had these latter problems until after June 30, 1996, it is unnecessary for me to dwell in this decision on whether these latter alleged impairments are 'impairments' or 'severe.'" AR 322.

1 The ALJ acknowledged that plaintiff had experienced some post-  
2 laparoscopy pain symptoms, but specifically declined to reach  
3 whether such symptoms were either "impairments" or "severe" within  
4 the meaning of the Act. AR 322. Crucially, the ALJ determined  
5 that the evidence could not reasonably support placing the onset of  
6 plaintiff's current pain symptoms any earlier than September 4,  
7 1996. AR 324.

8 SSR 83-20, as interpreted by DeLorme and Armstrong,  
9 requires an ALJ to call on a medical expert only when there is  
10 ambiguity as to a date of onset. DeLorme, 924 F2d at 848; Armstrong  
11 at 160 F3d at 590. The ALJ properly determined there was no  
12 ambiguity in this case, noting that "[i]n her 'Disability Report,'  
13 [plaintiff] dated all problems and functional limitations from  
14 September 4, 1996 onward." AR 323. Indeed, of all the symptoms  
15 plaintiff experienced after her date last insured (June 30, 1996),  
16 only plaintiff's back pain was also present prior to this date. AR  
17 323. Further, plaintiff's back pain was never bad enough prior to  
18 June 30, 1996 to warrant more than a few passing notations in  
19 physicians' reports, or to prevent plaintiff from being able to lift  
20 fifty pounds. AR 323. The ALJ – permitted to consider a claimant's  
21 "daily activities" in assessing a claim for DIB, Fair v Bowen, 885  
22 F2d 597, 603 (9th Cir 1989) – made specific note of plaintiff's  
23 testimony that she could not "interact [with her] children as much  
24 as [she] used to after" her laparoscopy. AR 91, 323.

25 Because there was no ambiguity as to plaintiff's date of  
26 disability onset, the ALJ was not required to call on the services  
27 of a medical expert. The ALJ's determination here that no such  
28 ambiguity existed is supported by substantial evidence in the

1 record, and adheres to the correct legal standard. Plaintiff's  
2 argument accordingly fails.

3 3

4 Finally, plaintiff argues that the ALJ improperly  
5 discounted the import of her testimony and that of her husband, as  
6 well as evidence of plaintiff's early pain symptoms and her alleged  
7 mental impairments.

8 In evaluating the testimony of a claimant or other  
9 witness in a DIB proceeding, an ALJ may properly rely on "ordinary  
10 techniques of credibility evaluation." Fair, 885 F2d at 604, fn 5  
11 (9th Cir 1989). Here, the ALJ noted that most of plaintiff's  
12 testimony focused on her current pain, rather than on pain or  
13 disability prior to the expiration of her insured status. AR 323.  
14 Even that testimony that focused on pain symptoms prior to June 30,  
15 1996, was contradicted by two separate sources. First, plaintiff's  
16 statements in her original application for DIB indicate that all  
17 her current pain symptoms are "all due to complications ever since"  
18 her laparoscopy of September 1996. AR 87. Second, the ALJ noted  
19 that plaintiff reported to numerous doctors and other health  
20 professionals both that her pain started after her laparoscopy, and  
21 that she had experienced no health problems prior to the surgery.  
22 AR 322.

23 Similarly, plaintiff's husband testified that whatever  
24 pain plaintiff was experiencing prior to June 1996, it was in  
25 decline through 1994 and 1995, and had increased "dramatically"  
26 after plaintiff's laparoscopy in September 1996. AR 323. The ALJ  
27 took note of plaintiff's husband's testimony that only after  
28 plaintiff's laparoscopy did he "become 'heavily involved' and 'more

1 active' in the daily household chores because of [plaintiff's]  
2 decreased capacity to perform work around the home." Id. Overall,  
3 the ALJ determined that the husband's testimony did not "shed any  
4 light" on plaintiff's disability claim. Id.

5 The ALJ's decision to discount plaintiff's and her  
6 husband's testimony in favor of the "substantial other evidence of  
7 record" showing no disabling impairments prior to September 4, 1996  
8 is supported by substantial evidence. Id.


9 Plaintiff also asserts that the ALJ failed to give  
10 sufficient consideration or weight to plaintiff's mental  
11 impairments. The Ninth Circuit has recognized that mental  
12 impairments often progress slowly, and a precise date of onset may  
13 be difficult to establish. See Morgan, 945 F2d at 1082 (citing  
14 Blankenship v Bowen, 874 F2d 1116, 1122-23 (6th Cir 1989)). Here,  
15 the ALJ did not err in concluding that plaintiff suffered from no  
16 debilitating mental impairment prior to her date last insured or at  
17 anytime thereafter. Plaintiff reported experiencing "palpitations"  
18 according to a November 1996 report by Dr Stephen Raskin, who  
19 characterized these palpitations are "poorly described and  
20 unassociated with significant symptomatology." AR 130. While at  
21 least one medical doctor (an orthopedic surgeon) believed plaintiff  
22 suffered from "psychological problems," AR 255, this view was  
23 contradicted by Dr Peter Alevizos, a clinical psychologist, who  
24 determined plaintiff had no underlying depression and that what she  
25 required was "help dealing with her distress and coping with the  
26 physical sequelae" flowing from her laparoscopy. In short, there  
27 is nothing in the record to support plaintiff's contention that she  
28 suffers from a disabling mental impairment. As the ALJ correctly

1 pointed out, symptoms alone are not enough to establish a  
2 disability. 20 CFR § 404.1528(a); see also 20 CFR § 404.1508 ("A \*  
3 \* \* mental impairment must be established by medical evidence  
4 consisting of signs, symptoms, and laboratory findings, not only by  
5 your statement of symptoms."). The ALJ applied the correct legal  
6 standard and his decision was supported by substantial evidence.

7  
8 IV

9 For the foregoing reasons, the court affirms the SSA's  
10 decision to deny benefits. Accordingly, the court DENIES  
11 plaintiff's motion for summary judgment (Doc #10) and GRANTS  
12 defendant's motion for summary judgment (Doc #13). The clerk is  
13 directed to close the file and terminate all open motions.

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15 IT IS SO ORDERED.

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18 VAUGHN R WALKER  
19 United States District Judge  
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